

2014 WL 5315299 (N.Y.Sup.) (Trial Pleading)
Supreme Court of New York.
Bronx County

Devon PARNELL, Plaintiff,

v.

THE CITY OF NEW YORK, New York City Police Department
and Det. **Abdiel Anderson** (Shield No. 001429), Defendants.

No. 0305395-2014.
October 9, 2014.

Summons

Eric D. Levy, Esq., 930 Grand Concourse, Suite 1E, Bronx, New York 10451, (646) 755-8020, for plaintiff.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Bronx, New York October 9, 2014

Plaintiff DEVON PARNELL, by his attorney ERIC D. LEVY, ESQ., principal, complaining of the Defendants, respectfully shows to this Court and alleges the following upon information and belief:

PARTIES

1. At all times hereinafter mentioned, Plaintiff DEVON PARNELL ("MR. PARNELL") was a resident of Bronx County, City and State of New York.
2. At all times hereinafter mentioned, Defendant THE CITY OF NEW YORK ("CITY"), was and still is a municipal corporation organized and existing under and by virtue of the laws of the State of New York.
3. At all times hereinafter mentioned, Defendant DET. **ABDIEL ANDERSON** (Shield No. 001429), ("ANDERSON") was and still is a police officer employed by the Defendant CITY and the NEW YORK CITY POLICE DEPARTMENT ("NYPD").
4. On and prior to July 16, 2013, ANDERSON was employed by Defendants CITY and NYPD and was assigned in the Borough and County of Bronx, City and State of New York.
5. The actions of ANDERSON described herein were performed within the scope of his employment and authority and while he acted as an agent, servant and employee of Defendants CITY and NYPD.

BACKGROUND

6. On or about July 16, 2013, ANDERSON, acting as an agent, servant and employee of Defendants CITY and NYPD, without just cause or provocation, intentionally and falsely accused MR. PARNELL of having committed the crime of Criminal Sale of Marijuana in the Fourth Degree (P.L. § 221.40) and related charges.

7. On or about July 16, 2013, Defendants, their agents, servants and/or employees, intentionally placed MR. PARNELL under arrest without just cause or provocation and with reckless and negligent disregard for the truth.

8. On or about July 17, 2013, a criminal complaint was issued at the directive of Defendants, and a criminal action against MR. PARNELL was commenced under Docket No. 2013BX041586.

9. After his arrest on July 16, 2013, MR. PARNELL was detained by Defendants until he was released on his own recognizance, after agreeing to an adjournment in contemplation of dismissal on July 17, 2013; on July 16, 2014, Docket No. 2013BX041586 was dismissed and the records sealed.

10. As a result of the treatment of MR. PARNELL by the Defendants, MR. PARNELL was denied liberty by being falsely arrested and imprisoned for approximately two (2) days.

11. MR. PARNELL suffered emotional injuries due to the conduct of the Defendants. As a result of being falsely arrested and detained for two (2) days, MR. PARNELL suffered humiliation, fear for his safety and other emotional distress.

PROCEDURAL POSTURE

12. On July 26, 2013, Plaintiff served a Notice of Claim in writing sworn to on his behalf upon Defendant CITY, by delivering a copy thereof to the officer designated to receive such process personally, which Notice of Claim advised the Defendant of the nature, place, time and manner in which the claim arose, and the items of damage and injuries sustained so far as was then determinable.

13. More than thirty days have elapsed since service of said notice, and Defendant CITY has failed to pay or adjust the claim.

14. This action has been commenced within one year and ninety days after the cause of actions of Plaintiff accrued.

15. Plaintiff has duly complied with all conditions precedent to the commencement of this action.

FIRST CAUSE OF ACTION: FALSE ARREST

16. Paragraphs 1-15 are incorporated by reference as fully set forth herein.

17. On July 16, 2013 at approximately 5:30 p.m., at the corner of 184th St. and the Grand Concourse, in Bronx County, Defendant ANDERSON wrongfully touched, grabbed, handcuffed and seized MR. PARNELL, in an excessive manner about his person, causing MR. PARNELL physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff, seize or touch Plaintiff.

18. MR. PARNELL was aware of his arrest and confinement as described in paragraphs 1-17, and he did not consent to that arrest or confinement, nor was it privileged by law.

19. As a result of being falsely arrested by the Defendants, MR. PARNELL sustained multiple injuries. He was denied liberty and the ability to enjoy life for approximately two (2) days. He also suffered emotional distress, humiliation, loss of enjoyment of life and fear and intimidation for his safety.

SECOND CAUSE OF ACTION: FALSE IMPRISONMENT

20. Paragraphs 1-19 are incorporated by reference as though fully set forth herein.

21. The Defendants, their agents, servants and employees, arrested and confined MR. PARNELL, as described in paragraphs 1-20, and intended to confine MR. PARNELL. MR. PARNELL was conscious of his confinement and did not consent to it; moreover, the confinement was not privileged or authorized by any warrant, order, or other legal right.

22. As a result of being falsely imprisoned by the Defendants, MR. PARNELL sustained multiple injuries, including loss of liberty, emotional distress, humiliation, loss of enjoyment of life and fear and intimidation for his safety.

THIRD CAUSE OF ACTION: ABUSE OF PROCESS

22. Paragraphs 1-22 are incorporated by reference as though fully set forth herein.

23. In arresting MR. PARNELL, ANDERSON, acting in his capacity as an agent, servant and employee of Defendants CITY and NYPD, was motivated by an ulterior purpose to do harm, without justification or economic or social excuse.

24. In arresting MR. PARNELL, ANDERSON, acting in his capacity as the agent, servant and employee of Defendants CITY and NYPD, sought either a detriment to MR. PARNELL or a collateral advantage to the Defendants that is outside of the legitimate ends of making an arrest.

25. As a result of the abuse of process by the Defendants, MR. PARNELL sustained multiple injuries, including loss of liberty, emotional distress, humiliation, loss of enjoyment of life and fear and intimidation for his safety.

FOURTH CAUSE OF ACTION ASSAULT AND BATTERY

26. Paragraphs 1-25 are incorporated by reference as though fully set forth herein.

27. On July 16, 2013 at approximately 5:30 p.m., at the corner of 184th St. and the Grand Concourse, in Bronx County, Defendant ANDERSON along with other New York City police officers, wrongfully touched, grabbed, pushed, handcuffed and seized MR. PARNELL, in an excessive manner about his person, causing MR. PARNELL physical pain and mental suffering.

28. That on or about July 16, 2013 through July 17, 2013, and while in the custody of the defendants in the County of Bronx, City of New York, the Plaintiff MR. PARNELL was intentionally touched, grabbed, pushed, assaulted, violated, humiliated and handcuffed by ANDERSON, along with other New York City police officers who were acting within the scope of their employment and authority in such a manner as to knowingly cause injury to plaintiff; specifically, inside the 46 Pct., MR PARNELL was forced by ANDERSON and other officers who are currently unknown to Plaintiff, to be the subject of a strip search by removing his clothing and exposing his genitals and buttocks to numerous people.

29. That on or about July 16, 2013 through July 17, 2013, along with other New York City police officers their agents, servants and employees, acting as agents and on behalf of the CITY and NYPD within the scope of their employment, did intentionally, willfully and maliciously assault and batter MR. PARNELL, in that they had the real or apparent

ability to cause imminent harmful and/or offensive bodily contact and intentionally did a violent and/or menacing act which threatened such contact to MR. PARNELL and their act caused apprehension of such contact in the plaintiff, and in a hostile and/or offensive manner intentionally touched the plaintiff and/or made offensive bodily contact to MR. PARNELL and caused such battery in and about his chest, body and limbs. At no time did MR. PARNELL consent to the aforesaid assault and battery.

30. While not conceding that said arrest was lawful or made upon probable cause, the aforesaid intentional assault and battery during the arrest was excessive. The excessive force used, including but not limited to the pushing, shoving and grabbing of MR. PARNELL, was an assault and battery beyond that which was necessary to make the arrest.

31. That by reason of the aforesaid intentional assault and battery committed by the defendants, their agents, servants and employees, in particular ANDERSON, along with other New York City police officers acting within the scope of their employment and authority and without any probable or reasonable cause, MR. PARNELL suffered bodily injury in and about his body and limbs and suffered conscious pain and suffering, and that he was otherwise damaged.

FIFTH CAUSE OF ACTION: NEGLIGENCE

33. Paragraphs 1-32 are incorporated by reference as though fully set forth herein.

34. At all times hereinafter mentioned, the aforesaid false arrest, false imprisonment, abuse of process and malicious prosecution were caused solely by the negligence of the Defendants, their agents, servants and/or employees.

35. As a result of the negligence of the Defendants, MR. PARNELL sustained multiple injuries, including loss of liberty, emotional distress, humiliation, loss of enjoyment of life and fear and intimidation for his safety.

SIXTH CAUSE OF ACTION: NEGLIGENT SUPERVISION

36. Paragraphs 1-35 are incorporated by reference as though fully set forth herein.

37. Defendants CITY and NYPD, through its agents, servants and employees, had the responsibility for supervising, disciplining, evaluating and training ANDERSON, as well as all of the other NYPD officers involved in this matter.

38. Defendants CITY and NYPD have grossly failed to train and properly supervise its police officers, particularly the detectives and police officers involved herein, regarding the law of arrest, search and seizure.

39. Defendants CITY and NYPD were negligent by failing to implement a policy within its police department instructing police officers not to arrest individuals such as the Plaintiff unless there is a court authorized warrant or sufficient cause.

40. The foregoing acts, omissions and systematic failures are customs and policies of the Defendants, which caused its police officers to falsely arrest, maliciously prosecute, illegally search and seize Plaintiff.

41. Defendants CITY and NYPD had the responsibility for supervising, disciplining, evaluating and training the police officers involved herein, including ANDERSON.

42. Defendants CITY and NYPD were negligent in supervising, disciplining, evaluating and training the police officers involved herein, including ANDERSON.

43. As a result of the negligence of Defendants CITY and NYPD and ANDERSON, MR. PARNELL sustained multiple injuries, including loss of liberty, emotional distress, humiliation, loss of enjoyment of life and fear and intimidation for his safety.

SEVENTH CAUSE OF ACTION: NEGLIGENT HIRING

44. Paragraphs 1-43 are incorporated by reference as though fully set forth herein.

45. Defendants CITY and NYPD had the responsibility for hiring ANDERSON.

46. Defendants CITY and NYPD were negligent in hiring ANDERSON.

47. As a result of the negligence of the Defendants, MR. PARNELL sustained multiple injuries, including loss of liberty, emotional distress, humiliation, loss of enjoyment of life and fear and intimidation for his safety.

EIGHTH CAUSE OF ACTION

48. Paragraphs 1-47 are incorporated by reference as though fully set forth herein.

49. Defendant ANDERSON was at all times relevant, a duly appointed and acting officer of the City of New York Police Department.

50. At all times mentioned herein, ANDERSON was acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

51. Plaintiff is and at all times relevant herein, a citizen of the United States and brings this cause of action pursuant to [42 United States Code, section 1983](#) and [42 United States Code, section 1988](#).

52. Defendant CITY is a municipality duly incorporated under the laws of the State of New York.

53. On or about July 16, 2013 the Defendants, armed police, while effectuating the seizure of the Plaintiff, did search, seize, assault and grab the person of Plaintiff without a court authorized arrest warrant. They did physically seize the person of Plaintiff during the arrest process in an unlawful and excessive manner. Plaintiff was falsely arrested and maliciously prosecuted without the Defendants possessing probable cause.

54. The above actions of the Defendants resulted in Plaintiff being deprived of the following rights under the United States Constitution:

- a. Freedom from assault to his person;
- b. Freedom from battery to his person;
- c. Freedom from illegal search and seizure;
- d. Freedom from false arrest;
- e. Freedom from malicious prosecution;
- f. Freedom from the use of excessive force during the arrest process.

55. The Defendants subjected Plaintiff to such deprivations, either in a malicious or reckless disregard of Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United State Constitution.

56. The direct and proximate result of the Defendants' acts are that Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

WHEREFORE, Plaintiff demands judgment against the Defendants, together with the costs and disbursements of this action in the amount of damages greater than the jurisdictional limit of any lower court that would otherwise have jurisdiction, together with attorneys' fees and costs for bringing this case, and punitive damages.

Dated: Bronx, New York October 9, 2014

Yours, etc.,

ERIC D. LEVY, ESQ.

Attorney for Plaintiff

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